



Amendment No. 4  
To  
Contract No. GC170000001  
For  
Refuse, Recycling, and Organic Containers  
Between  
Toter, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be January 1, 2020 through December 31, 2021. No options remain.
- 2.0 The total contract amount is increased by \$2,100,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2016 – 12/31/2017	\$4,910,000.001	\$4,910,000.00
Amendment No. 1: Option 1 – Extension 01/01/2018 – 12/31/2018	\$4,400,000.00	\$9,310,000.00
Amendment No. 2: Option 2 – Extension 01/01/2019 – 12/31/2019	\$5,100,000.00	\$14,410,000.00
Amendment No. 3: Option 3 – Extension 01/01/2020 – 12/31/2020	\$4,725,000.00	\$19,135,000.00
Amendment No. 4: Option 4 – Extension 01/01/2020 – 12/31/2021	\$2,100,000.00	\$21,235,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 This City of Austin contract is associated with the Houston-Galveston Area Council (HGAC) cooperative RC01-18. The effective HGAC cooperative term is January 1, 2018 through December 31, 2020.
- 5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Laura P. Hubbard 9/17/2020

Printed Name: Laura P. Hubbard  
Authorized Representative

Toter, LLC  
841 Meacham Road  
Statesville, North Carolina 28677  
(800) 424-0422  
[kclark@toter.com](mailto:kclark@toter.com)

Sign/Date: Matthew Duree Digitally signed by  
Matthew Duree  
Date: 2020.12.07  
14:27:34 -06'00'

Matthew Duree  
Procurement Manager  
City of Austin  
Purchasing Office  
124 W. 8th Street, Ste. 310  
Austin, Texas 78701



Amendment No. 3  
To  
Contract No. GC170000001  
For  
Refuse, Recycling, and Organic Containers  
Between  
Toter, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be January 1, 2020 through December 31, 2020. One option remains.
- 2.0 The total contract amount is increased by \$4,725,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2016 – 12/31/2017	\$4,910,000.001	\$4,910,000.00
Amendment No. 1: Option 1 – Extension 01/01/2018 – 12/31/2018	\$4,400,000.00	\$9,310,000.00
Amendment No. 2: Option 2 – Extension 01/01/2019 – 12/31/2019	\$5,100,000.00	\$14,410,000.00
Amendment No. 3: Option 3 – Extension 01/01/2020 – 12/31/2020	\$4,725,000.00	\$19,135,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 This City of Austin contract is associated with the Houston-Galveston Area Council (HGAC) cooperative RC01-18. The effective HGAC cooperative term is January 1, 2018 through December 31, 2020.
- 5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: William J. Houser 10/16/19

Printed Name: William J. Houser  
Authorized Representative

Toter, LLC  
841 Meacham Road  
Statesville, North Carolina 28677  
(800) 424-0422  
[kclark@toter.com](mailto:kclark@toter.com)

Sign/Date: Matthew Duree 12-12-19

Matthew Duree  
Procurement Manager

City of Austin  
Purchasing Office  
124 W. 8th Street, Ste. 310  
Austin, Texas 78701



Amendment No. 2  
of  
Contract No. GC170000001  
Contract # H-GAC RC01-18  
for  
Refuse, Recycling, and Organics Containers  
between  
Toter, LLC.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension will be effective January 1, 2019 to December 31, 2019. Two options remain.
- 2.0 The total contract amount is increased by \$5,100,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/23/2016 – 12/31/2017	\$4,910,000.00	\$4,910,000.00
Amendment No. 1: Option 1 01/01/2018 – 12/31/18	\$4,400,000.00	\$9,310,000.00
Amendment No. 2: Option 2 01/01/2019 – 12/31/19	\$5,100,000.00	\$14,410,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: \_\_\_\_\_

Printed Name: Laura P. Hubbard, Director of Municipal Sales  
Authorized Representative

Signature: \_\_\_\_\_

Matthew Duree, Purchasing Manager  
City of Austin  
Purchasing Office

Toter, LLC  
841 Meacham Road  
Statesville, NC 28677



Amendment No. 1  
of  
Contract No. GC170000001  
Contract # H-GAC RC01-18  
for  
Refuse, Recycling, and Organics Containers  
between  
Toter, LLC.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension will be effective January 1, 2018 to December 31, 2018. Three options remain.
- 2.0 As per section 1.4 of the Supplemental Terms and Conditions, Term of Contract, "The City reserves the right to transfer this contract by amendment to future H-GAC contract(s) that supersede H-GAC RC01-16 if the terms and conditions are favorable to the City." The City will exercise its right to transfer the remaining option to contract H-GAC RC018
- 3.0 The total contract amount is increased by \$4,400,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/23/2016 – 12/31/2017	\$4,910,000.00	\$4,910,000.00
Amendment No. 1: Option 1 01/01/2018 – 12/31/18	\$4,400,000.00	\$9,310,000.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: \_\_\_\_\_

Printed Name: James Pickett  
Authorized Representative

Signature: \_\_\_\_\_

Danielle Lord, Purchasing Manager  
City of Austin  
Purchasing Office

Toter, LLC  
841 Meacham Road  
Statesville, NC 28677  
[jpickett@toter.com](mailto:jpickett@toter.com)  
704-878-0734





## City of Austin

**Purchasing Office, Financial Services Department**  
P.O. Box 1088, Austin, TX 78767

November 11, 2016

Toter, LLC  
James Pickett  
841 Meachem Road  
Statesville, NC 28677

Dear Mr. Pickett:

The Austin City Council approved the execution of a contract with your company for refuse, recycling, and organics containers in accordance with the referenced solicitation.

Responsible Department:	Austin Resource Recovery
Department Contact Person:	Richard McHale
Department Contact Email Address:	<a href="mailto:Richard.mchale@austintexas.gov">Richard.mchale@austintexas.gov</a>
Department Contact Telephone:	512-974-4301
Project Name:	Refuse, Recycling, and Organics Containers
Contractor Name:	Toter, LLC
Contract Number:	GC170000001
Contract Period:	11/10/2016 – 12/31/2017
Dollar Amount	\$4,910,000
Extension Options:	Option 1: \$4,400,000 Option 2: \$5,100,000 Option 3: \$4,725,000 Option 4: \$2,100,000
Requisition Number:	RQM 1500 16110800095
Solicitation Number:	HGAC RC01-16
Agenda Item Number:	34
Council Approval Date:	11/3/2016

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Sandy Wirtanen  
Senior Buyer  
City of Austin  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("CITY")  
AND  
Toter, LLC ("CONTRACTOR")  
FOR  
REFUSE, RECYCLING, AND ORGANICS CONTAINERS  
MA 1500 GC170000001**

This Contract is between Toter, LLC having offices at 841 Meacham Road, Statesville, North Carolina 28677 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on the date executed by the City ("Effective Date"). Solicitation requirements are met by using Contractor's the Contractor's Houston-Galveston Area Council Contract No. RC01-16 dated January 1, 2016 ("H-GAC RC01-16").

**1.1 This Contract is composed of the following documents:**

- 1.1.1 H-GAC RC01-16
- 1.1.2 This document
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, the City's Non-Discrimination Certification
- 1.1.5 Exhibit C, the City's Non-Suspension & Debarment Certification.

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 H-GAC RC01-16 as referenced in Section 1.1.1
- 1.2.2 This document
- 1.2.3 Exhibit A as referenced in Section 1.1.3
- 1.2.4 Exhibit B, as referenced in Section 1.1.4
- 1.2.5 Exhibit C, as referenced in Section 1.1.5

**1.3 Quantity.** There are no minimum order quantities.

**1.4 Term of Contract.** The Contract shall be in effect until December 31, 2017 and may be extended thereafter for four (4) 12 month extension options, subject to the extension of H-GAC RC01-16, approval of the Contractor and the City Purchasing Officer or his designee. The City reserves the right to transfer this contract by amendment to future H-GAC contract(s) that supersede H-GAC RC01-16 if the terms and conditions are favorable to the City.

**1.5 Compensation.** The Contractor shall be paid a total not to exceed amount of \$4,910,000 for the initial Contract term and \$4,400,000 for the first extension option, \$5,100,000 for the second extension option, \$4,725,000 for the third extension option, and \$2,100,000 for the fourth extension option, for a total contract amount not to exceed \$21,235,000.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

TOTER, LLC

  
Signature

James W. Pickett

Printed Name of Authorized Person

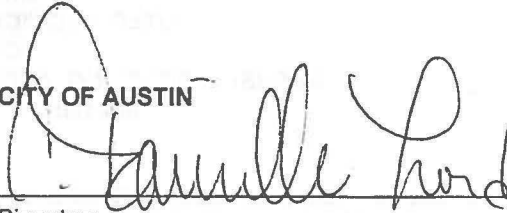
Vice President, Sales

Title:

November 22, 2016

Date:

CITY OF AUSTIN

  
Signature

Danielle Lord

Printed Name of Authorized Person

Corp. Purchasing Manager

Title:

11/23/16

Date:

Exhibit A - Supplemental Terms

Exhibit B - City's Non-Discrimination Certification

Exhibit C - City's Non-Suspension & Debarment Certification

## EXHIBIT A

### SUPPLEMENTAL TERMS

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be James W. Pickett; Phone: (704) 878-0734; Email: jpickett@toter.com. The City's Contract Manager for the engagement shall be Richard McHale; Phone: (512) 974-4301; Email: Richard.mchale@austintexas.gov.

2. **Invoices.** Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. All invoices must be forwarded to the City Department that placed the order and created the purchase order. Federal Excise Taxes, State taxes, or City sales tax must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

Invoices shall be emailed to the below address:

City of Austin
Austin Resource Recovery
Contract Manager and Accounts Payable Department
ARR.AP@austintexas.gov

3. **Payment.**

3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.7 failure of the Contractor to comply with any material provision of the Contract.

3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.



3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

4. **Right to Audit.**

4.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

4.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

5. **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

Attn: Tracy Franklin, Contract Administrator

P.O. Box 1088

Austin, TX 78767

To the Contractor:

Toter, LLC

Attn: James W. Pickett

841 Meacham Road

Statesville, NC 28677

6. **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

6.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

6.2 **The Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

6.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7. **Insurance.**

7.1 General Requirements.

7.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

7.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

7.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

7.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

7.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

7.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

7.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

7.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

7.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

7.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

7.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

7.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

7.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

7.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

7.2 Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods,

and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

7.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

7.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

7.2.1.2 Contractor/Subcontracted Work.

7.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

7.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

7.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

7.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

7.2.2 Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

7.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

7.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

7.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

7.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

7.2.3.1 The Contractor's policy shall apply to the State of Texas.

7.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

7.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

7.2.5 Professional Liability Insurance. The Contractor shall provide coverage, at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

7.2.6 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

8. **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

9. **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

9. **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

10. **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

11. **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City

12. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

13. **Delivery Terms and Transportation Charges.** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified. Unless otherwise stated, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Department".



14. **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

14.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

14.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

14.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

15. **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

16. **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

16.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

16.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

16.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

17. **Subcontractors.**

17.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B,

2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

17.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

17.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

17.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

17.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

17.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

17.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

17.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

17.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**18. Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

19. **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

## 20. Indemnity.

### 20.1 Definitions:

20.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

20.1.1.2 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

20.1.1.3 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

20.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

20.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**  
**SOLICITATION NO**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*



*Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.*

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 18<sup>th</sup> day of November, 2016.

CONTRACTOR

Authorized Signature

Title

TORRAC  
M/V  
DIVISION DIR. OF H.R.

**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

SOLICITATION NO.

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	<div style="border: 1px solid black; padding: 2px;">Toter, LLC</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; padding: 2px;">Nov 18, 2016</div>
Printed Name:	<div style="border: 1px solid black; padding: 2px;">Laura P. Hubbard</div>		
Title:	<div style="border: 1px solid black; padding: 2px;">Director, Customer Satisfaction</div>		

A CONTRACT BETWEEN  
**HOUSTON-GALVESTON AREA COUNCIL**  
Houston, Texas  
AND  
**TOTER, LLC**  
Statesville, North Carolina

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Toter, LLC**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 841 Meacham Road, Statesville, North Carolina 28677.

**ARTICLE 1:** **SCOPE OF SERVICES**

The parties have entered into a **Refuse and Recycling Containers & Lifters** Contract to become effective as of January 1, 2016, and to continue through December 31, 2017 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Refuse and Recycling Containers & Lifters** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Refuse and Recycling Containers & Lifters** through the **H-GAC** Contract to **END USERS**.

**ARTICLE 2:** **THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:RC01-16, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No:RC01-16, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3:** **LEGAL AUTHORITY**

**CONTRACTOR** and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4:** **APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5:** **INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6:** **END USER AGREEMENTS**

**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer to, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

**ARTICLE 7:**

**SUBCONTRACTS & ASSIGNMENTS**

**CONTRACTOR** agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

**ARTICLE 8:**

**EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**CONTRACTOR** shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9:**

**REPORTING REQUIREMENTS**

**CONTRACTOR** agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10:**

**MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

**EXCEPTION:** *This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11:**

**SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12:**

**DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.



**ARTICLE 13:****LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the **CONTRACTOR** and an **END USER**, **CONTRACTOR**'s total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify **H-GAC** described in Article 14, is limited to the price of the particular products/services sold hereunder, and **CONTRACTOR** agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will **CONTRACTOR** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER** any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14:****LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

**H-GAC**'s liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will **H-GAC** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of **CONTRACTOR**'s negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

**ARTICLE 15:****TERMINATION FOR CAUSE**

**H-GAC** may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR**'S failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

**ARTICLE 16:****TERMINATION FOR CONVENIENCE**

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

**ARTICLE 17:****CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

**CONTRACTOR** agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas, and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18:****GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

**ARTICLE 19:****PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

**CONTRACTOR** agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to entities without Interlocal Contracts, **CONTRACTOR** shall pay the applicable order processing charges to **H-GAC**. Further, **CONTRACTOR** agrees to encourage entities who are not members of **H-GAC**'s Cooperative Purchasing Program to execute an **H-GAC** Interlocal Contract. **H-GAC** reserves the right to take appropriate actions including, but not limited to, contract termination if **CONTRACTOR** fails to promptly remit **H-GAC**'s order processing charge. In no event shall **H-GAC** have any liability to **CONTRACTOR** for any goods or services an **END USER** procures from **CONTRACTOR**.

**ARTICLE 20:****LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between **CONTRACTOR** and **END USER** at the time **END USER**'s purchase order is placed.

**ARTICLE 21:****PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

**H-GAC**'s contractual requirements **DO NOT** include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, **CONTRACTOR** must be prepared to offer a PPB to cover any specific order if so requested by **END USER**. **CONTRACTOR** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER**'s purchase order.

**ARTICLE 22:****CHANGE OF CONTRACTOR STATUS**

**CONTRACTOR** shall immediately notify **H-GAC**, in writing, of **ANY** change in ownership, control, dealership franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23:****LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD /IF APPLICABLE/**


**CONTRACTOR** will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any **CONTRACTOR'S** license is not renewed, or is denied or revoked, **CONTRACTOR** shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston  
Area Council, Houston, Texas:


  
Jack Steele, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:

  
Deidre Vick, Director of Public Services

Date: Dec 4, 2015

Signed for Toter, LLC  
Statesville, North Carolina:

  
Printed Name & Title: James W. Pickett - Vice President, Sales

Date: November 18, 2015

Attest for Toter, LLC  
Statesville, North Carolina:

  
Printed Name & Title: Richard Sedory - Sr. Vice President, General Counsel and Secretary

Date: November 18, 2015

**Attachment A**  
**Toter, LLC**  
**Refuse and Recycling Containers & Lifters**  
**Contract No.: RC01-16**

<b>H-GAC Product Code</b>	<b>Item Description</b>	<b>Offered Price</b>	<b>Minimum Quantity</b>
AJ359	<b>Toter</b> EVR52532: 32 gallon residential rollout cart: automated dumping design, rotational molded, 10" wheels	\$36.01	TL OF 1404
AJ360	<b>Toter</b> EVR 52535: 35 gallon residential rollout cart: automated dumping design, rotational molded, 10" wheels	\$36.01	TL OF 1404
AJ361	<b>Toter</b> EVR57564: 64 gallon residential rollout cart: automated dumping design, rotational molded, 10" wheels	\$43.36	TL OF 648
AJ362	<b>Toter</b> EVR57596: 96 gallon residential rollout cart: automated dumping design, rotational molded, 10" wheels	\$50.53	TL OF 636
AJ363	<b>Toter</b> EVR 76532: 32 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$36.52	TL OF 1404
AJ364	<b>Toter</b> EVR 76535: 35 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$36.52	TL OF 1404
AJ365	<b>Toter</b> EVR 76564: 64 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$43.87	TL OF 648
AJ366	<b>Toter</b> EVR 76596: 96 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$51.03	TL OF 636
AJ367	<b>Toter</b> EVR II 79224: 24 gallon capacity residential roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$34.14	TL OF 1488
AJ368	<b>Toter</b> EVR II 79248: 48 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$40.93	TL OF 912
AJ369	<b>Toter</b> EVR II 79264: 64 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$43.00	TL OF 864
AJ370	<b>Toter</b> EVR II 79296: 96 gallon capacity residential rollout cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$50.06	TL 624
AJ371	<b>Toter</b> Insert VRI10: When installed into a 24 gallon cart (EVR 79224, 79321 and 79324) this 10 gallon insert changes capacity of the 24 gallon cart to a 10 gallon cart	\$17.30	TL OF 3120
AJ372	<b>Toter</b> Insert VRI20: When installed into a 32 gallon cart (Models EVR 76532 and 52532), this 20 gallon insert changes capacity of the 32 gallon cart to a 20 gallon cart	\$19.17	TL OF 1333
AJ373	<b>Toter</b> EVR II 79B64: 64 gallon capacity residential "Bear Tight" cart: universal dumping design, rotating steel stop bar, 10" wheels	\$180.05	TL OF 370
AJ374	<b>Toter</b> EVR II 79B96: 96 gallon capacity residential "Bear Tight" cart: universal dumping design, rotating steel stop bar, 10" wheels	\$195.50	TL OF 350
BJ375	<b>Toter</b> EVR Vented Yard Waste Cart 76864: 64 gallon capacity residential rollout cart for plant waste: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels, vents only (vents and grids offered on Form E)	\$45.19	TL OF 648

BJ376	<b>Toter</b> EVR Vented Yard Waste Cart 76896: 96 gallon capacity residential rollout cart for plant waste: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels, vents only (vents and grids offered on Form E)	\$52.41	TL OF 636
BJ377	<b>Toter</b> EVR Co-Collection Cart 77564: 64 gallon capacity residential rollout cart: dual compartmentalized, universal dumping design, rotating steel stop bar, 10" wheels	\$77.50	TL OF 360
BJ378	<b>Toter</b> EVR Co-Collection Cart 77596: 96 gallon capacity residential rollout cart: dual compartmentalized, universal dumping design, rotating steel stop bar, 10" wheels	\$89.60	TL OF 336
DJ379	<b>Toter</b> FL020: 2 cubic yard capacity front end load plastic container: rotational molded, 6" x 2" casters	\$452.00	TL OF 80
DJ380	<b>Toter</b> FL030: 3 cubic yard capacity front end load plastic container: rotational molded, 6" x 2" casters	\$559.00	TL OF 64
DJ381	<b>Toter</b> Organics FL030: 3 cubic yard capacity front end load plastic container: rotational molded, 6" x 2" casters, special body reinforcements included for handling organics materials	\$850.95	TL OF 39
DJ382	<b>Toter</b> FL040: 4 cubic yard capacity front end load plastic container: rotational molded	\$607.00	TL OF 30
DJ383	<b>Toter</b> 840: Industrial public litter container: 45 gallon capacity, rotational molded, dome top, weighted base capability	\$258.50	Min 25
DJ384	<b>Toter</b> 860: Automated public litter container: 60 gallon capacity, rotational molded, dome top, weighted base capability, automated dumping design	\$346.50	Min 25
EJ385	<b>Toter</b> 3065-HL-9H24: HighLift residential rear or side lift applications lifter: hydraulic rotary actuator lifter, 350 pound rating, 21" x 15" x 32"	\$2,750.00	Min 1
EJ386	<b>Toter</b> 3065-HL-9H20: HighLift residential rear or side lift applications lifter: hydraulic rotary actuator lifter, 21" x 15" x 28"	\$2,750.00	Min 1
EJ387	<b>Toter</b> 3065-HL-9H18: HighLift residential rear or side lift applications lifter: hydraulic rotary actuator lifter, 21" x 15" x 36"	\$2,750.00	Min 1
EJ388	<b>Toter</b> 3063-TL-5M22: TrimLift residential rear or side lift applications lifter: slim profile, hydraulic rotary actuator lifter, 350 pound rating, 21" x 6" x 28"	\$2,675.00	Min 1
EJ389	<b>Toter</b> 3063-TL-5M24: TrimLift residential rear or side lift applications lifter: slim profile, hydraulic rotary actuator lifter, 21" x 6" x 30"	\$2,675.00	Min 1
EJ390	<b>Toter</b> 3063-TL-5M32: TrimLift residential rear or side lift applications lifter: slim profile, hydraulic rotary actuator lifter, 21" x 6" x 38"	\$2,675.00	Min 1
EJ391	<b>Toter</b> 3063-TL-4M16: TrimLift residential rear or side lift applications lifter: slim profile, hydraulic rotary actuator lifter, 21" x 6" x 19"	\$2,675.00	Min 1
EJ392	<b>Toter</b> 3069-00-2000: EconoLift residential rear lift applications lifter: hydraulic rotary actuator lifter, 350 pound rating, 15" x 13" x 23"	\$1,810.00	Min 1
GA044	<b>Toter</b> EVR II 79321: 21 gallon capacity residential organics roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$36.06	TL OF 1488
GA045	<b>Toter</b> EVR II 79324: 24 gallon capacity residential organics roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$41.56	TL OF 1488
GA046	<b>Toter</b> EVR II 79332: 32 gallon capacity residential organics roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 8" wheels	\$38.11	TL OF 945

GA047	<b>Toter</b> EVR II 79348: 48 gallon capacity residential organics roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$42.31	TL OF 912
GA048	<b>Toter</b> EVR II 79232: 32 gallon capacity residential roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 8" wheels	\$37.46	TL OF 945
GA049	<b>Toter</b> EVR II 79235: 35 gallon capacity residential roll-out cart: universal dumping design, rotational molded, rotating steel stop bar, 10" wheels	\$41.11	TL OF840
GA056	<b>Toter</b> Insert VRI10: When installed into a 24 gallon cart (EVR 79224, 79321 and 79324) this 10 gallon insert changes capacity of the 24 gallon cart to a 10 gallon cart	\$17.30	TL OF 3120
GA057	<b>Toter</b> Insert VRI20: When installed into a 32 gallon cart (Models EVR 76532 and 52532), this 20 gallon insert changes capacity of the 32 gallon cart to a 20 gallon cart	\$19.17	TL OF 1333



## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Sandy Wirtanen 512-974-7711	<b>PM Name/Phone</b>	Teri Jeffries 512-974-1816
<b>Sponsor/User Dept.</b>	Austin Resource Recovery	<b>Sponsor Name/Phone</b>	
<b>Solicitation No</b>	Cooperative	<b>Project Name</b>	HGAC Toter Containers
<b>Contract Amount</b>	\$4,150,000 with 4 options at \$4,500,000/year	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
Cooperative purchases of refuse, recycling, and organics containers from Toter.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
Previously through HGAC with no goals assigned.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
45065			
Sandy Wirtanen		9/1/2016	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	9/2/2016	<b>Date Assigned to BDC</b>	9/2/2016
<b>In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

### This determination is based upon the following:

- |  |   |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs                  |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities    |
| <input type="checkbox"/> Sole Source                               | <input type="checkbox"/> Other                                      |

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

This is a cooperative H-GAC contract commodity purchase.

### Subcontracting Opportunities Identified

No subcontracting opportunities identified.

Counselor Name

SMBR Staff *Kenneth Kahu*

Signature/ Date *Kenneth Kahu 9/6/2016*

SMBR Director or Designee

*[Signature]*

Date

*9/6/16*

Returned to/ Date: